Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

C. Anita Robinson,
Edith M. Bradford,
Linda Mines,
Carolyn A. Dingwall,
Delphine M. Jones,

Petitioners,

v.

District of Columbia
Board of Zoning Adjustment,
Metropolitan Day School, Inc.,

Respondents,

On Petition for Writ of Certiorari
to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The issues presented by the petitioners are as follows:

I. Whether the District of Columbia Court of Appeals may impose requirements of injury in fact that it deems acceptable to grant standing in light of petitioners' allegations that their substantive and procedural due process rights afforded them by the Fourteenth and Fifth Amendment to the Constitution of the United States was denied by the Zoning Agency?

II. Whether 5 U.S.C. §702 of the Congressional Administrative Procedure Act standing provision and its District of Columbia counterpart, D.C.A.P.A., D.C. Code Section 1-1510 which obligates persons who reside within an arguable zone of interest(s) to allege, acceptable "injury in fact" in appeals of land use decisions in order to have standing is a valid exercise of Congress' power under the Enforcement Clause of the Fourteenth Amendment to the Constitution?

III. Whether the Congressional Federal Administrative Procedure Act standing provision, 5 U.S.C §702 and its District of Columbia counterpart, D.C.A.P.A., D.C. Code Section 1-1510 which limits individual Advisory Neighborhood Commissioners whose property is located within the arguable "zone of interest" from seeking judicial review of a land use decision violates such individuals Fourteenth and Fifth Amendment rights to the U.S. Constitution and whether this limiting factor is a valid exercise of Congress' power under the Enforcement Clause of the Fourteenth Amendment to the Constitution?

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PARTIES TO THE PROCEEDING

The name of the intended party to this proceeding is Ward 5A-06 Single-Member-District (SMD) Advisory Neighborhood Commissioner, Mary Baird-Currie. Individual petitioners are pursuing this matter in their own right and on behalf of the ANC Commissioner.

JURISDICTIONAL STATEMENT

The petitioners filed a Petition for Review in the District of Columbia Court of Appeals on August 10, 1999 of which Mary Baird-Currie, Ward 5A-06 Advisory Neighborhood Commissioner was listed as a petitioner. The Court denied said petition on September 30, 1999 as lacking standing and denied a Motion for Reconsideration on October 22, 1999.

The petitioners filed another Petition for Review with the District of Columbia Court of Appeals on October 15, 1999. The Court denied said petition on December 2, 1999 as petitioners lacked the "requisite injury in fact" to be granted standing to appeal.

Jurisdiction is invoked upon this Court as set forth in Article III, Section 2, Clause 2 of the Constitution of the United States of America:

> "In all other Cases before mentioned the Supreme Court shall have appellate Jurisdiction both as to the Law and Fact..."

The First Amendment:

> "Congress shall make no law...prohibiting the request of the people to petition the government for a redress of grievances."

And Fifth Amendment of the Constitution of the United States of America:

> "No person shall be ... deprived of life, liberty, or property without due process of law..."

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C.A § 1257(1).

STATEMENT OF THE CASE

On March 31, 1999. The District of Columbia Board of Zoning Adjustment (hereinafter known as the BZA) held a hearing regarding the application of the Metropolitan Day School Inc. (hereinafter known as MDS, Inc.) seeking a special exception zoning relief to operate a private school and a before and after care program, The BZA notified all persons via mail who resided within two hundred (200) feet of the proposed site, which included the petitioners and the single member Advisory Neighborhood Commissioner of the hearing date and their right to attend and be heard. Petitioners appeared and attempted to express their opposition.

On May 24, 1999, the BZA (Application, No. 16421) rendered a decision to grant the special exception to MDS, Inc. and denied a subsequent "Motion for Rehearing/Reconsideration" on September 10, 1999, by the parties in opposition.

The petitioners filed timely Petitions for Review of the BZA's decision in the District of Columbia Court of Appeals, (Nos. 99-AA-1060 and 99-AA-1340, respectively) alleging a denial of due process rights of the petitioners by the BZA in refusing to hear the most important piece of the petitioners evidence in opposition to the special exception.

REASONS FOR GRANTING THE PETITION

A. Violation of Due Process Clause by the State

Petitioners contend that the D.C. Court of Appeals violated substantive due process which embodies procedural due process. Due process emanates from the Fifth Amendment (protection from federal actions) and the Fourteenth Amendment (protection from state actions) to the United States Constitution. Due process therefore requires that legislation be fair and reasonable in content as well as application. In

broad terms, substantive due process may be defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property. The essence of substantive due process is therefore protection from arbitrary, capricious and unreasonable action. *Jeffries v. Turkey Run Consolidated School District,* 492 F. 2d. 1, 3 (C.A. Ind.)

There are two aspects of the due process clause – procedural, in which, a person is guaranteed procedural fairness and substantive which *protects inter alia a* person's property from unfair governmental interference or taking. The fundamental requisite of due process is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice, whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney,* D.C. N.Y., 387 F. Supp 1044, 1084. Aside from all else, due process means fundamental and substantial justice. *Vaughn v. State,* 3 Tenn.Crim. App. 54, 456 S.W. 2d 819, 883.

The Constitution of the United States as drafted at Philadelphia in 1787, did not contain a Bill of Rights. This fact alarmed many Americans at the time because they feared that without such a bill the new central government might by arbitrary decisions infringe upon their newly won freedoms. In December of 1787, Thomas Jefferson wrote to his friend James Madison stating that:

> "A bill of rights is what the people are entitled to against every government on earth..... and that is what no just government should refuse or rest on inference."

In 1791, the Bill of Rights was adopted and ratified by the states. This document contained ten articles and based its content on such earlier statements of rights as the Magna Carta, the English Bill of Rights, and the Virginia Declaration of Rights. Although this Bill of Rights was adopted in the United States, there were doubts among constitutional experts about the authority of the federal courts to enforce the provisions of the Bill of Rights against state laws and court decisions. To resolve this doubt, the Fourteenth Amendment was

adopted and ratified in 1868 following the Civil War and the Reconstruction period. This Amendment provided that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Thus, State and Local laws became subject to Federal judicial review. Two clauses of the Fourteenth Amendment have had a significant impact on judicial interpretations of the Bill of Rights: the due process clause and the equal protection clause.

The applicable sections of the Amendment states:

> "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *[Emphasis added]*.

These clauses have enabled the federal Government to implement guaranties against state actions in matters of freedom of speech, religion, fair trials, etc.

The vitality of the Bill of Rights in ensuring individual rights of American citizens is expressly stated in those of its predecessors, namely the Virginia Declaration of Rights drafted by James Madison, considered a brilliant student of Colonial government, and the respective Declaration of Independence by Thomas Jefferson of which the Declaration of Rights was a source. The Declaration of Independence stated the basis of government as derived from the people, explained the rights of individuals and set specific limitations on the powers of government.

The inception and design of the Bill of Rights of the Constitution makes it mandatory that federal court, in this instance, or the Supreme Court, directly review any decision by a state court of last resort or any law enacted by such court that violates any citizen's constitutional right to due process of law, where it is alleged that such a violation has occurred. State courts may not and cannot deny or obliterate citizens'

rights to due process of law inherent in the U.S. Constitution in the face of its state-imposed law.

The petitioners contend that an allegation of a denial of their due process rights to be heard in opposition on and issue before the BZA, and to the D.C. Court of Appeals to seek judicial review, not only constitutes injury in fact, but weighs greater on the scale than any other concrete or tangible injury required by the D.C. Code Section 1-1510 and should not require a delineation of such to be granted standing.

B. Constitutionality of the Congressional Federal Administrative Procedure Act Standing Provision

The petitioners state that the Congressional Federal Administrative Procedure Act standing provision (APA) and its District of Columbia Counterpart (D.C. A.P.A.) does not fully guarantee the constitutional rights of individuals.

The legislative processes of Congress are invoked by Article I section 8 of the Constitution of the United States of America. Section 8 Clause 9 states:

> "The Congress shall have power to constitute tribunals inferior to the Supreme Court."

Section 8 Clause 11 states:

> "The Congress shall have power to make rules for the government and regulation of the land."

Section 8 Clause(s) 17 and 18 states:

> "The Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall

> be for the erection of forts, magazines, arsenals and other needful buildings and Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the Government of the United States, or in any department or officer thereof."

The law enforcement duties delegated to Congress are also embodied in the Fourteenth Amendment to wit:

> "The Congress shall have power to enforce by appropriate legislation the provisions of this article." (Enforcement Clause).

It flows therefore from the language of the U.S. Constitution that Congress is empowered to enforce the non-abridgment of citizens' rights. Based on the provisions in the Constitution, Congress cannot enact legislation that would violate the Fourteenth Amendment or allow the promulgation of state laws based upon congressional legislation that abridges the privileges or immunities of the citizens of the United States, denies any person within the state's jurisdiction the equal protection of laws.

Express Constitutional restrictions on Congress is embodied in the written opinion of Supreme Court Justice Black who states:

> "The Constitution is filled with provisions that grant Congress or the states specific power to legislate in certain areas..." *Williams vs. Rhodes*, 393 U.S. 23, 29 (1968). (Opinion of the Court).

Justice Black in a different text:

> "These granted powers are always subject to the limitations that they may not be exercised in a way that violates other specific provisions of the Constitution ..." *id.*

A similar opinion was proffered by the elder Justice Harlan:

> "We think that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the Courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty or property without due process of law ." *United States v. Bitty*, 208 U.S. 393, 399-400(1908) (Opinion of the Court).

The final location of the National government (District of Columbia) had its origin in the following: The Convention was moved to provide for the creation of a site in which to locate the Capital of the Nation, completely removed from the control of any State, because of the humiliation suffered by the Continental Congress on June 21, 1783. Some eighty soldiers, unpaid and weary, marched on the Congress sitting in Philadelphia, physically threatened and verbally abused the members and caused Congress to flee the city when neither municipal nor state authorities would take action to protect the members. J. Fiske, THE CRITICAL PERIOD OF AMERICAN HISTORY 1783-1789 (Boston; 1888) 112-113; W. TINDALL, THE ORIGIN AND GOVERNMENT OF THE DISTRICT OF COLUMBIA (WASHINGTON; 1903), 31-36.
Thus, James Madison noted in the FEDERALIST, No. 43 that:

> "The indispensable necessity of complete authority at the seat of government, carries its own evidence with it... without it, not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national council an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the confederacy."

The actual site was selected by a compromise between the North and South. Northerners accepted the Southern favored site on the Potomac in return for Southern support of a Northern aspiration, the assumption

of Revolutionary War debts by the National Government. W. TINDALL, THE ORIGIN AND GOVERNMENT OF THE DISTRICT OF COLUMBIA (Washington 1903), 5-30. Maryland and Virginia both authorized the cession of territory and Congress accepted. *Maryland Laws* 1796, ch.2,p.43, *13 Laws of Virginia* 43 (Hening 1789); *Act of July 16*, 1790, 1 stat. 130. Congress divided the District into two counties, Washington and Alexandria, and provided that the local laws of the two states should continue in effect. *Act of February 27*, 1801, 2, 2 Stat. N3. Congress also established a circuit court and provided for the appointment of judicial law enforcement officials. *Act of March 3*, 1801, 1, 2, Stat. 115.

Initially, there seemed to be no recorded consideration given at the convention or in the ratifying convention to the question of governance of the citizens of the District, only predictions of the perils to the Nation of setting up the national government in such a place. 3 J. STORY COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (Boston; 1833) 1215, 1216. Killian, G. Costelle; CONSTITUTION OF THE UNITED STATES ANALYSIS AND INTERPRETATION. 1992, p. 334. Madison in the FEDERALIST, No. 43 (J. Cooke ed., 1961, 289) did state to wit that the inhabitants:

> "Will have had their voice in the election of the government which is to exercise authority over them, as a municipal legislature for all local purposes, derived from their own suffrages, will of course be allowed them..."

Although there was some dispute about the constitutional propriety of permitting local residents (District) a measure of "home rule," to use the recent term, almost from the beginning, local elections were provided for. Such a contention was cited and rebutted in 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (Boston; 1833), 1218. In 1802, the District was divided into 5 divisions, in some of which the governing officials were elected. In 1802, an elected Mayor was provided. District residents participated in some elections of those who governed them until 1874 until Congress prevented such elections in the wake of financial scandals. *Act of May*

3, 1802, 2 Stat., 195; *Act of May 15*, 1820, 3. Stat. 583. *Act of February 21*, 1871, 16 Stat. 419; *Act of June 20*, 1874, 18 Stat. 116. W. Whythe; THE UN-CIVIL WAR; WASHINGTON DURING THE RECONSTRUCTION (Washington; 1958). The limited election process was replaced with a presidential appointed commission in 1878 that lasted until 1967 whenit was replaced by an appointed Mayor Commissioner and an appointed city council. *Act of June 11*, 1878, 20 Stat. 103 and *the Reorganization Plan No. 3* of 1967, 32 Fed. Reg. 116 99, reprinted as appendix to District Columbia Code Title 1.

Congress has in recent years provided for the District of Columbia, a limited form of self-government, with the major offices being filled via the election process. Residents of the District vote for President and Vice-President and elect a non-voting delegate to Congress. *XXIII Amendment to the United States Constitution; District of Columbia Self -Government and Governmental Reorganization Act*, P.L. 93-198,87 Stat. 774; Twenty-third Amendment P.L. 91-405, 84 §48, D.C. Code 1-291. An effort to confer voting representation in the House and Senate by constitutional amendment failed ratification by the states. *H. J. Res. 554, 95th Congress.*

From the standpoint of the Constitution, it appears that Congress is neither required to provide for a locally elective government nor precluded from delegating its powers over the District to an elective local government. *Loughborough v. Wheat*, 5 amend. (18 U.S.) 317 (1820); *Heald v. District of Columbia*, 259 U.S. 114(1922); *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100(1953). The Court in *Thompson v. Lessee of Carroll*, held that the "exclusive" jurisdiction granted was meant to exclude any question of state power over the District and was not intended to require Congress to exercise all powers itself. 22 How. (63U.S.) 422 (1860) *also Stoutenburgh v. Hennick*, 129 U.S. 141(1889); *District of Columbia v. John R. Thompson Co*, 346 U.S. 109-110.

The Court held for nearly a century and a half that the District of Columbia was not a State within the meaning of the diversity Jurisdiction clause of Article III. *Hepburn v. Ellzey* 2 cr. (6 U.S.) 445(1805) (Opinion of Chief Justice Marshall).

This view was overturned in 1949 when the court upheld the constitutionality of a 1940 statute, authorizing federal courts to take jurisdiction of non-federal controversies between the residents of the District of Columbia and the citizens of a state, by a margin of 5 to 4. *National Mutual Ins. Co v. Tidewater Co.*, 337 U.S. 582 (1949).

There is no dispute that the District of Columbia is a part of the United States and therefore, its residents are entitled to all the guarantees of the United States Constitution. *Callan v. Wilson* 127 U.S. 540 (1888); *Capital Traction Co. v. Hof*, 174 U.S. (1) (1899). Legislation restrictive of liberty and property in the District must find justification in facts adequate to support like legislation by a state in the exercise of its police power. *Wright v. Davidson*, 181 U.S. 371, 384 (1901).

Congress possesses over the District of Columbia the blended powers of a local and national legislature. *Kendall v. United States ex* . Stokes, 12 Pet. (37U.S.) 524, 619 (1838); *Shoemaker v. United States*, 147 U.S. 282, 300 (1893); *O'Donoghue v. United States*, 289 U.S. 516, 518 (1833). When legislating for the District of Columbia, Congress, therefore, remains the legislature of the Union, so that it may give its enactment's nationwide operation to the extent necessary to make them locally effective. *Cohens v. Virginia, 6, Wheat* (19 U.S.) 264, 428 (1821). Killian, G. Costelle; CONSTITUTION OF THE UNITED STATES, ANALYSIS AND INTERPRETATION . 1992, p. 333, 337.

The petitioners now turn the discussion to the Congressional Judicial Review section of the Administrative Procedures Act (APA) standing provision. Congress in 5 U.S.C. §702 limits the class of persons who may seek judicial review of an agency decision to those who must be aggrieved or injured by an agency action and that the alleged injury must be to an interest arguably within the zone of interests to be protected or regulated by the statute in question. *Lower Moreland Homeowner's Ass'n v. Department of Housing and Urban Development*, D.C. Pa. 1979, 479 F. Supp. 886. Congress therefore construes its standing provisions to fall within the relevant meaning of a state statute and acknowledges that what is considered criteria for adverse effect or aggrievement varies from statute to statute.

The result of 5 U.S.C. §702 is that, persons or organizations must demonstrate personal or actual or threatened injury in fact and the nature or severity of this injury is subject to the interpretation of the state court before standing to seek judicial review, is granted.

Congress, with respect to the standing provision for persons to seek judicial review of agency decisions, has not placed enough constitutional safeguards or guarantees for persons aggrieved by a lack of fairness, justice, or abridgement of their rights at the hearing stage before governmental agencies. In other words, the Federal Administrative Procedures Act Standing Provision, in its current state offers no assurances that the due process clauses of the Fifth and Fourteenth Amendments, which are interpreted by the Court to be essentially the same, with regards to individual rights, are enforced. The Court has held that the equal protection clauses of the Fourteenth Amendment are interpolated to the Fifth.

While with respect to agency decisions, particularly land use decisions, the limiting of persons with the ability to seek judicial review, to those whose injuries are within an arguable "zone of interest" to the statute to be protected, is a comprehensible one to establish proper parties, the requirement to demonstrate within applicable statutes, concrete, acceptable, personal, tangible injury in fact as a pre-condition to establish standing to appeal such decision, is unconstitutional, because it does not guarantee one's right to legal redress of grievances.

The petitioners contend that in order to ensure the protection of individual rights inherent in the United States Constitutions' due process clauses; therefore, the only limiting factor that Congress should impose upon standing to seek judicial review of agency decisions, is the determination to put decision as to whether review will be sought in the hands of those who have a direct stake in the outcome (arguable zone of interest). *Sierra Club v. Morton*, U.S. Cal. 1992, 92 5 Ct. 1361, 405 U.S. 727, 31 L. Ed. 2d 636. Such persons should be entitled to a direct appeal to the next court or tribunal for review of the agency's decision, as is the case when appeals are taken from a trial court to the next highest court for appellate review.

All persons within the territory of the United States are entitled to the protection of 'due process of law' including corporations, aliens and citizens seeking readmission to the United States. *South Carolina v. Katzenback*, 383 U.S. 301, 323-24 (1966). Due Process is effective in the District of Columbia and in territories, which are part of the United States. *Wright v. Davidson*, 181 U.S. 371, 384(1901); *Lovato v. New Mexico*, 242 U.S. 189, 201(1916).

The District of Columbia Administrative Procedure Act (D.C.A.P.A.) found in D.C. Code Section 1-1510 regarding standing to seek judicial review is virtually identical to 5 U.S.C. §702 in its language. Thus the statute states to wit:

> "In order to seek review of an administrative agency's decision: (1) The petitioner must allege that the challenged action has caused him "injury in fact, (2) the interest sought to be protected by the petitioner must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question..."

Petitioners contend that as with the Federal Statute, requirement number two of this statute is the necessary regulation which assures standing, to those directly affected by the agency decision. Requirement number one, while it is necessary for any petitioner or plaintiff to allege aggrievement, subjects the petitioner to the interpretation of the District court, as to what it considers acceptable necessary or enough tangible injury to seek redress. It is obvious from this standpoint that the court could ignore or deny a petitioner basic Constitutional guarantees to a fair hearing at the agency level; or it could even ignore petitioners actual injury in fact to the effect that it would eliminate the petitioners right to legal redress of grievances in the higher court. This statute sets up a basis to exert a 'numbing effect' on the constitutional rights of the residents of the District of Columbia with respect to land use decisions.

Congress in its capacity to legislate over state statutes must enforce the Fourteenth Amendment to guarantee citizens rights. 5 U.S. C. §702

and its District of Columbia counterpart is not a valid exercise of Congress' enforcement power.

C. Constitutionality of the Preclusion of Individual Advisory Neighborhood Commissioners to Seek Judicial Review of Land Use Decisions

The relevant aspects in the discussion of question numbers one and two are incorporated herein.

The District of Columbia Administrative Procedure Act of which the standing requirements to seek judicial review of agency decisions is incorporated in D.C. Code Section 1-1510 states in relevant part:

> (3) there must be no clear legislative intent to withhold judicial review either from the class of persons or in the type of case involved... *Lee v. District of Columbia Bd. Of Appeals and Review*, App. D.C., 423 2d. 210 (1980); *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A. 2d 417(1983).

The previous paragraph states in relevant part that:

> "Because Congress has so restricted the class of persons who may appeal an administrative decision to the Court of Appeals, appellate jurisdiction over the subject matter on review is contingent upon petitioners' right to prosecute the appeal. Therefore, the appellate court is obligated to raise the issue of petitioners' standing *sua sponte*..."

The District of Columbia Court of Appeals in *Kopff v. District of Columbia Alcoholic Beverage Board*, held that pursuant to the D.C. Act of 1975, D.C. Law 1-58, March 26, 1976, now codified in D.C. Code 1987 supp., Section 1-1510, a specific prohibition against initiation of legal actions by Advisory Neighborhood Commissioners in the District of Columbia or in the Federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen. 413 A. 2d., 152, 1980. The Congressional Federal

Administrative Procedure Act standing provision (5U.S.C. §702) and its District of Columbia counterpart (D.C. Code Section 1-1510), based on the language of the D.C. Statute therefore may preclude the Advisory Neighborhood Commission or its Commissioners on behalf of the ANC from seeking judicial review or initiating such review in the courts but it does not preclude individual commissioners from seeking review of court decisions as citizens.

Individual Advisory Neighborhood Commissioners as tax paying citizens (real and personal) of the United States of America have therefore a right to initiate suit on behalf of their own individual interests. District of Columbia citizens who happen to be Advisory Neighborhood Commissioners have a vested personal interest in governmental agency land use decisions where their property interests are contained within arguable zones of interest to a challenged action and must be able to seek legal redress if they are aggrieved by such action. Such individuals must have the ordinary basic vested constitutional rights to life, liberty and property, and the equal protection of those rights afforded them by the United States Bill of Rights.

The District of Columbia Court of Appeals in its utilization of the District of Columbia Administrative Procedure Act (DCAPA) and the Federal Administration Procedure Act (APA) on which the former is based, to preclude persons who are elected Advisory Neighborhood Commissioners from seeking judicial review of a land use decision where such persons are seeking review on the basis of aggrievement and that their property interest are within the arguable zone of interest to a challenged action is unconstitutional, because it is a violation of the substantive due process clauses of the Fifth and Fourteenth Amendments to the Constitution.

Congress in delegating legislative authority regarding judicial review to relevant statutes, where such statutes (as D.C. Code Section 1-1510) may preclude legitimate individuals from seeking judicial review of agency decision, especially land use decisions, is not properly enforcing the Fourteenth Amendment to the United States Constitution and the equal protection clause.

It must be reiterated that, although the District of Columbia is not a state, for purposes of judicial review by Federal Courts, the Court considers the due process clause of the Fourteenth Amendment which contains the equal protection clause as applicable and equivalent to the Fifth Amendment which is applicable to the District of Columbia.

The Congressional (APA) mandate upon which D.C. Section 1-1510 is based amounts to discriminating legislation with respect to individual Advisory Neighborhood Commissioners seeking legal redress as citizens. Chief Justice Taft in *Traux v. Corrigon* observed:

> "that the due process and equal protection clauses are "associated" and that "(it may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not coterminous. (Due process) tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right to life, liberty and property which the Congress or the legislative may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law." 257 U.S. 312, 331(1921)

In *Buckley v. Valeo*, the Court held that:

> "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." 421 U.S.1, 93 (1976); *Weinburger v. Wiesenfield*, 420 U.S. 631, 638 n 2(1975).

The District of Columbia Court of Appeals not only violated the due process rights of the individual Advisory Neighborhood Commissioner (ANC) by disallowing her right to prosecute an appeal of the BZA's decision; the Court of Appeals did not protect her statutory rights to advise or represent the views of the neighborhood residents. Although the Advisory Neighborhood Commission has no standing to seek judicial review of an agency decision, area residents who are ANC Commissioners should have standing to initiate legal action and to assert the rights of the neighborhood residents, and the ANC itself. If the statutory rights of an ANC Commissioner is hindered to the extent

that such Commissioner is unable to adequately represent neighborhood views, then actual injury to the ANC Commissioner occurs. Thus, that injury is within the arguable zone of interests sought to be protected by the statute in question (D.C. Code Section 1-1510).

The petitioners contend that D.C. Code Section 1-1510 is too restrictive and poses a mutually exclusive means to bar individuals from challenging agency decisions. Such exclusion as is the case here, fosters the encroachment of government interests both public and private, upon the constitutional rights of affected persons, the very situation that urged the founding fathers to adopt and ratify the Bill of Rights Amendments to the United States Constitution.

CONCLUSION

Petitioners state that unlike other States, the residents of the District of Columbia are limited to only one appellate court, the District of Columbia Court of Appeals, in which to seek judicial review of an agency decision. Wherefore, for the reasons outlined in this petition, petitioners pray that this court grant a writ of certiorari.

Respectfully submitted,

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